

*Before the*  
Federal Communications Commission  
Washington D.C. 20554

In the Matter of	)	
	)	
2010 Media Ownership Review NPRM	)	MB Docket No. 09-182
March 3, 2012	)	

**Comments of**  
**Future of Music Coalition**

**INTRODUCTION**

Future of Music Coalition (FMC) respectfully submits these comments to the FCC in its Notice of Proposed Rulemaking regarding the 2010 Media Ownership Review. FMC is a national nonprofit research, education, and advocacy organization for musicians with an established history of documenting trends in the music industry, including commercial broadcast radio. FMC supports the interests of musicians, particularly independent artists, who have historically faced tremendous barriers in achieving commercial radio airplay. In addition, we align with the interests of many music fans who are underserved by the homogenized content so common to the commercial broadcasting landscape.

FMC was founded a more than a decade ago, at a time when the traditional music industries faced tremendous turbulence as a result of emerging digital technology. Although disruptive to many, these transformations also offered new opportunity for a range of players who had previously found few openings in traditional media. There is, however, still a great deal of potential in such traditional technologies as over-the-air broadcast radio, yet time and again, commercial operators have failed to live up to their core strength: the ability to be live and local. Multiple studies by FMC show that consolidation in commercial broadcast ownership has negatively impacted competition in the radio sector, and compromises the FCC's stated goals of localism, competition and diversity. We once again urge the Commission to closely consider radio's transformation following the 1996 Telecommunications Act as it undertakes a review of current media ownership rules.

Since 2002, FMC has published six major research studies that examined various aspects of radio in the wake of the 1996 Telecommunications Act. We have produced and offered to the Commission detailed analyses on radio station ownership and market share, broadcast industry employment and wages, a content analysis of citizens' comments filed during the 2002 proceeding, and the effectiveness of a 2007 voluntary agreement between the FCC and four major station group owners that was meant to curb structural payola. Each of these documents have been filed with the Commission and are accessible via our website.<sup>1</sup>

Many of our findings on broadcast radio have been cited by FCC Commissioners and the courts.<sup>2</sup> Among the most significant of these findings: counting format names is an inadequate measure for format "diversity"; just fifteen formats make up 76 percent of commercial radio programming; the FCC's signal contour market definition had allowed companies to exceed the ownership caps in 104 markets; and the 2007 payola consent decrees and Rules of Engagement have had little impact on musicians' access to the airwaves.<sup>3</sup>

FMC strongly supports the FCC's stated principles of localism, competition and diversity, and believes that consolidation in radio and other media are not consistent with the promotion of an accessible, diverse and community-centric media environment. In these comments, FMC will

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<sup>1</sup> All Future of Music Studies have been archived on our website, available at <http://www.futureofmusic.org/research>

<sup>2</sup> Statements of FCC Commissioner Jonathan Adelstein at the Social Science Research Counsel Media Research Pre-Conference, (Jan 11, 2007), transcript available at <http://mediaresearchhub.ssrc.org/news/transcript-of-fcc-commissioner-adelsteins-remarks-at-media-policy-research-pre-conference>.

<sup>3</sup> DiCola, Peter. *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry*, [hereinafter *False Premises*] December (2006) p.4, available at <http://www.futureofmusic.org/article/research/false-premises-false-promises>

summarize our findings regarding the FCC’s proposed rulemaking, which we hope will encourage the Commission to further consider its responsibility to nurture and safeguard diversity in broadcast and other media.

## **I. LOCAL RADIO OWNERSHIP RULE**

### **A. The Current Local Radio Ownership Rule Should Remain in Place**

The FCC is correct in its decision to keep the current local radio ownership rule. However, more needs to be done to fulfill the Commissions established goals of localism, competition and diversity. Using its existing authority, it is well within the power of the FCC to encourage commercial radio operators to do more to reinvigorate what was once a vibrant and diverse form of media, accessible to and beloved by millions of listeners, including music fans and artists.

#### *i. Local And Diverse Radio Ownership Is Important For The Community And For The Marketplace In General.*

The importance of localism and diversity in radio ownership cannot be overstated. Given more than two decades of consolidation, it is ever more important for the FCC to stand firm on these crucial principles. Even where the Commission fails to internalize or act upon these core tenets, members of the United States Congress are clear. In a recent letter to FCC Chairman Julius Genachowski, members of the House Communications and Technology Subcommittee stated that, “Protecting localism is a critical and longstanding goal of the Federal Communications

Commission's media ownership rules.”<sup>4</sup> With this in mind, we remind the FCC to ensure that its rules engender a radio marketplace that is truly local and diverse.

The current local radio ownership rule, while adequate in terms of preventing further consolidation in radio station ownership, falls short regarding the allowance of new entrants. In order for radio to truly be local and diverse it must be possible for new and differently situated voices to participate in radio ownership. We encourage the FCC to explore ways in which it can make a more competitive radio market as well as better reflect a commitment to community needs. Germane to our concern for diversity is the directive from the courts, most recently in *Prometheus Radio Project v. FCC*.<sup>5</sup> Greater diversity in radio ownership necessarily leads to more diversity on the radio dial. Thus, more diversity will stimulate the radio market, creating a more competitive, and possibly more lucrative, commercial space for all participants. These benefits aside, it remains the FCC’s errand to ensure such diversity in radio ownership as part of its very reason for existence.<sup>6</sup>

ii. *The FCC Should Not Change The Rules Concerning AM/FM Subcaps.*

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<sup>4</sup> Rep. Mike Doyle, et al. “House Communications and Technology Subcommittee’s Letter to the FCC,” available at <http://doyle.house.gov/press-releases-1/2011/12/washington-dc-december-6.shtml>. See Also See *Prometheus Radio Project v. F.C.C.*, 373 F.3d 372 (3rd Cir. 2004) (“*Prometheus I*”) (citing *F.C.C. v. Nat’l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978)) (reiterating the Supreme Court’s finding of a substantial government interest in promoting diversified mass communications and that limiting common ownership is a reasonable means of doing so).

<sup>5</sup> “*Prometheus II*,” 652 F.3d 431 (3rd Cir. 2011).

<sup>6</sup> *Prometheus I*, 373 F.3d at 395 (Discussing the Commission’s rulemaking review powers “no matter what the Commission decides to do to any particular rule—retain, repeal, or modify (whether to make more or less stringent)—it must do so in the public interest and support its decision with a reasoned analysis”).

There is no compelling reason that the FCC should reorient their rules based upon the AM/FM subcaps. The subcaps should stay in place so that precious spectrum is not used to rebroadcast stations whose interests and programming are neither local nor diverse. AM radio stations are one of the few broadcast media platforms left which offer any chance of entrance for new market participants.<sup>7</sup> If the subcaps are eliminated, further consolidation of the radio market could easily take place under the familiar guise of “efficiency.”<sup>8</sup> The largest players will not hesitate to obtain more stations, either AM or FM, if the subcaps are eliminated. This would freeze out many voices, including those of minorities and women. For this reason and others, is imperative that the FCC keep its AM/FM subcaps in place.

iii. *Digital Media Outlets Do Not Eliminate The Need For Radio*

While new listening platforms are important, especially in the digital age, they do not replace a robust radio landscape, particularly in terms of diverse, local station ownership. Radio listenership has not dwindled in the manner that most have anticipated. An Edison Research study from 2010 showed that young people still turn to radio as their first media outlet when looking for new music.<sup>9</sup> From the iPod to Spotify, no known service has been able to usurp radio’s important role as communicator of culture. If the FCC allows our society’s presence in the “digital revolution” to adjust its priorities away from radio we will lose a fundamentally

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<sup>7</sup> See *Ruggiero v. FCC*, 278 F.3d 1323, 1325 (D.C.Cir.2002), *rev'd en banc*, 317 F.3d 239 (D.C.Cir.2003) (citing the Commission's statement that “[n]ow ... radio service is widely available throughout the country and very little spectrum remains available for new full-powered stations.”).

<sup>8</sup> Similar justifications for retaining the AM/FM subcaps were given in the FCC’s 2008 Order, accepted as a sufficient basis for retaining the rule in *Prometheus II*, 652 F.3d at 463.

<sup>9</sup> “Radio Leading Source of Music Info for Youth,” Edison Research, Radio II’s Future: The 2010 American Youth Study, Oct. 6, 2007, available at, <http://www.marketingcharts.com/radio/radio-leading-source-of-music-info-for-youth-14471/>

important cultural tool which has not yet become obsolete, and needn't ever be, provided policies are in place to further its diversity and locally-tailored growth. If radio is losing listeners, it is likely due to the fact that its programming is restrictive and does not offer the diversity of content that today's consumers have come to expect. The reasons for this are clear. In our 2002 and 2006 studies, FMC found that ten parent companies dominated the radio spectrum, radio listenership *and* radio revenues. Deregulation allowed a few large radio companies to swallow many of the small ones, and by 2001 these ten parent companies controlled two-thirds of both listeners and revenue nationwide. Two parent groups in particular, Clear Channel and Viacom, controlled 42 percent of listeners and 45 percent of industry revenues at the time.<sup>10</sup>

The FMC data provided in the FCC's 2006 Quadrennial Review clearly shows that programmatic diversity is greatest in station groups that are below their local ownership market caps.<sup>11</sup> Among such smaller station owners, religious format stations and Spanish-format stations are more common, as are Classical and Jazz/New Age stations. Indeed, some of the nation's most fragile and culturally important musical formats are *only* served by small, independent owners. Additionally, the balance across all programming format categories is generally more even. It appears that a wider variety of programming comes from the relatively small station groups and not the large station groups that resulted from the FCC's signal-contour market definition.<sup>12</sup> This finding casts doubt on any potential claims that larger station groups will offer the public a wider

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<sup>10</sup> Peter DiCola & Kristin Thompson, *Radio Deregulation: Has it Served Citizens and Musicians?* [hereinafter "*Radio Deregulation*"], pg. 24-25 (2002), , available at <http://www.futureofmusic.org/research/radiostudy.cfm>.

<sup>11</sup> Comments of the Future of Music Coalition, *2006 Quadrennial Regulatory Review*, FCC MB Docket No. 06-121 (Oct. 23, 2006) p. 11.

<sup>12</sup> *Id.*

variety of programming, and supports the notion that the local ownership caps should not be loosened or eliminated, but strengthened.

**B. Song Remains the Same: More Consolidation, Less Competition, Less Diversity, and Less Localism Equals a Public Disservice**

FMC has continually argued that, since the enactment of the 1996 Telecommunications Act, radio has suffered from an onslaught of consolidation, leading to fewer participants on the public airwaves. Although we are not presenting any new data, there is little reason to believe that the conclusions drawn from our prior extensive research would be substantively changed were our robust methodologies reemployed. Rather, we ask the FCC to reexamine the work that we, and others, have done to illuminate the importance of localism and diversity in radio, as well as the negative effects of media consolidation in general.

**II. RADIO/TELEVISION CROSS OWNERSHIP RULE**

The FCC should not eliminate the radio/television cross-ownership rule. We dispute the Commission's assertion that radio/television cross-ownership does not negatively impact the diversity of programming available to consumers. Depending solely on the local radio and local television rule is not sufficient to protect the public from media conglomerates that consistently exploit any available avenues to own as many media outlets as possible. Radio is still the medium with the greatest potential for new entrants, including women and minorities. If the



FCC eliminates the radio/television cross-ownership rule it will further limit radio's potential as one of the few entry points for these vital voices. Those corporate media entities that endorse consolidation routinely fail to show any economic benefit from the supposed efficiencies that are gained through common ownership. In fact, even a cursory glance at the commercial radio marketplace reveals a deep and pervading dysfunction. Beyond the failed economics, another thing is perfectly clear: consolidated corporate broadcasters have engendered demonstrable proof that there is less programmatic diversity and access for local voices due to their perverse addiction to acquisitions. Without the radio/television cross-ownership rule the dearth of localism and diversity in the media will continue, to the detriment of consumers of American media.

## **CONCLUSION**

Once again, FMC is pleased to offer our perspectives to the Commission as it moves towards the completion of its Quadrennial Media Ownership Rules Review. Likewise, we humbly offer our organization as a resource to the Commission as it sorts through the many challenges in today's media landscape. We remain convinced that the FCC must remain invested in crafting ownership rules that reflect its goals of promoting competition, localism and diversity on the public airwaves. With this in mind, we commend you on your attention to serving these goals, today and in the future.

Respectfully Submitted,

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Future of Music Coalition